

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 MIAMI DIVISION  
4 CASE NO. 22-MJ-03273-DAMIAN

5 UNITED STATES OF AMERICA, Miami, Florida  
6 Plaintiff, August 1, 2022  
7 vs. Pages 1 to 39  
8 AARON THOMAS MITCHELL,  
9 Defendant.

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11 REMOVAL/DETENTION HEARING  
12 BEFORE THE HONORABLE LAUREN FLEISCHER LOUIS  
13 UNITED STATES MAGISTRATE JUDGE  
(TRANSCRIPT OF DIGITAL AUDIO RECORDING)

14 APPEARANCES:

15 FOR THE GOVERNMENT: FRANK TAMEN, ESQ.  
16 AEJEAN CHA, ESQ.  
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17  
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1 (PROCEEDINGS TRANSCRIBED FROM DIGITAL AUDIO RECORDING)

2 COURTROOM DEPUTY: Calling United States versus Aaron  
3 Thomas Mitchell, case number 22-3273-Magistrate Judge Damian.  
4 Counsel, please announce your appearances for the  
5 record.

6 MR. TAMEN: Good morning, Your Honor, Frank Tamen for  
7 the United States, and with me who is going to be covering this  
8 hearing is Department of Justice Civil Rights Division Attorney  
9 Aejean Cha.

10 MS. CHA: Good morning, Your Honor, Aejean Cha with the  
11 United States.

12 THE COURT: Thank you, Ms. Cha.

13 MR. JACOBS: Good morning, Your Honor. Andrew Jacobs  
14 from the Federal Public Defender's Office on behalf of  
15 Mr. Mitchell.

16 THE COURT: Okay. Thank you, Mr. Jacobs, Mr. Mitchell.  
17 I have you on for two proceedings this morning, removal and  
18 detention hearing.

19 Before we go any further, can I confirm, I have heard  
20 the phone go a couple of times. Do I have with me the  
21 out-of-district persons who wanted to attend this hearing? You  
22 can either verbalize or Ms. Cha, have you been in contact with  
23 the participants that you sought permission to be here by  
24 phone?

25 MS. CHA: I have not talked to them this morning, but I

1 can check my phone or perhaps the agent can contact them to see  
2 if they have gone on the line.

3 THE COURT: I appreciate it because I know that they  
4 have a right to be here and they sought to be here, so let's  
5 make sure that technology is on their side.

6 Okay. I will just ask Mr. Jacobs, what's our intention  
7 with the removal hearing? Are you just going to roll them into  
8 the same proceeding or --

9 MR. JACOBS: We have a waiver of removal and the  
10 preliminary, but we are ready to conduct the pretrial detention  
11 hearing here in the Southern District.

12 THE COURT: Do you mind if I go ahead and do that  
13 because otherwise I may forget after the detention hearing?  
14 So, if you have --

15 MR. JACOBS: Okay, Your Honor.

16 THE COURT: Please.

17 Okay. Mr. Mitchell, when you made your initial  
18 appearance in this district, another judge advised you of the  
19 rights that you have when you are charged in one district and  
20 arrested in another, as is what's happening in your case,  
21 right? You're being charged in Arizona. Right?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. But you have been picked up  
24 here.

25 Before I can commit you to that other district, send

1     you there, you have the right to have certain proceedings  
2     conducted here. It's my understanding, because I am holding a  
3     waiver that appears to bear your signature, that you have  
4     decided to waive your right to certain proceedings here. So  
5     let me make sure that you understand that you know that you  
6     have been charged in another district and you have been  
7     apprised of those charges.

8             You have counsel appointed to represent you here in  
9     this district, Mr. Jacobs. Have you consulted with Mr. Jacobs  
10    about the rights that you have to those proceedings here,  
11    specifically the preliminary hearing and the identity or  
12    removal hearing and production of the warrant? Have you talked  
13    to him about that?

14            THE DEFENDANT: Yes, Your Honor.

15            THE COURT: Do you feel that you understand what would  
16    happen at those proceedings, specifically, the removal hearing?  
17    I have to take make sure that the Government can adduce proof  
18    that you are the person who is wanted in Arizona and the  
19    preliminary hearings relate to probable cause.

20            It's my understanding, though, that it's an indicted  
21    case. Right?

22            MR. JACOBS: Yes, Your Honor, it has been indicted.

23            THE COURT: All right. Do you understand what would  
24    happen at those proceedings?

25            THE DEFENDANT: Yes, Your Honor.

1 THE COURT: After consulting with counsel, is it your  
2 decision to waive the right to those proceedings in this  
3 district and have the case move to Arizona?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. Then I will accept your waiver as  
6 knowing and voluntarily entered. Let me just confirm that the  
7 signature on this waiver is, in fact, your signature?

8 THE DEFENDANT: It is, Your Honor.

9 THE COURT: Before you signed it, did you understand  
10 the rights you would be giving up?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. I have added my signature and  
13 we will get you moving, get the case going.

14 Have we confirmed that the participants and witnesses  
15 or victims are on the line?

16 MS. CHA: Your Honor, we have not been able to confirm  
17 that this morning yet.

18 THE COURT: Okay. If you are present with me on the  
19 phone, can I get a verbal yes, I am here?

20 Could we ask that question in Spanish?

21 (Interpreter translating.)

22 MS. CHA: Your Honor, I just received confirmation that  
23 they are on.

24 THE COURT: All right. Can we further get confirmation  
25 because embedded in the e-mail request to me asked about an

1 interpreter so are the victims meaningfully able to understand  
2 and participate?

3 I'd like to know.

4 Could the interpreter ask if the folks on the phone  
5 need help with interpretation because we may have a logistical  
6 issue of setting that up?

7 The other concern that I have is that I keep hearing  
8 someone join and drop off and join so I don't know the current  
9 status.

10 Mr. Jacobs, I don't mean to leave you iced here, but I  
11 just want to make sure that logistically we get this going.

12 MR. JACOBS: No problem, Your Honor.

13 THE COURT: Will the interpreter ask one more time? I  
14 just am not sure that we're addressing them now.

15 Ms. Cha, I don't know the extent to which you want to  
16 use names.

17 I don't know if these folks know that we are trying to  
18 reach them.

19 MS. CHA: I believe the agent just stepped out and he  
20 is picking up the phone to call them.

21 THE COURT: Oh, okay.

22 THE INTERPRETER: Your Honor, should the interpreter  
23 attempt to ask the question again?

24 THE COURT: Hi.

25 MS. OLIVAS: Your Honor, this is Jessica Olivas. I'm

1 the victim witness advocate in the U.S. Attorney's Office in  
2 the District of Arizona.

3 We are hoping that the victims are on the line. We are  
4 not quite sure but we have a plan to call them right afterwards  
5 to update them of what is going on. So I wanted to let you  
6 know, they do have the contact information but we are not sure  
7 if they are on the line. We have been trying to reach them.

8 THE COURT: All right. Here is just my issue. I just  
9 want to make sure, and if you can confirm that the victims have  
10 been provided the time and information for the hearing.

11 Can you confirm that for me?

12 MS. OLIVAS: Yes, I can, Your Honor.

13 THE COURT: And as you may have just heard, someone  
14 e-mailed me a question about interpretation and I don't know  
15 whether or not that request came from you or whether these  
16 folks have been told one way or the other about interpretation,  
17 but is it your understanding that they can't participate unless  
18 someone interprets for them?

19 MS. OLIVAS: Yes, they can't, Your Honor. But if that  
20 wasn't going to be available, myself and the agent were going  
21 to provide interpretation.

22 THE COURT: Okay. So then let me just leave it here.

23 Are there any other requests on behalf of the victims  
24 or can I go ahead and start this hearing?

25 MS. OLIVAS: You can start, Your Honor, thank you.

1 All right. With that, I will turn back to the  
2 Government. I have received both your memoranda.

3 Mr. Jacobs, I received yours over the weekend and I  
4 have read both. Again, in case I forget to say it at the end  
5 of the hearing, both were excellent and exceptionally helpful.  
6 It's such a rarity that I get memorandum in advance of a  
7 detention hearing, and I just wanted to say thank you.

8 But with that, I also saw some request to show video  
9 and photos and it does not seem, based on what I have read from  
10 both of you, that there are many facts that are meaningfully in  
11 dispute, so I don't know what evidence either side needs to  
12 advance here because it seems like the facts that are disputed  
13 are few.

14 MS. CHA: Your Honor, we have the videos available  
15 should the Court like to see them, and we have provided them to  
16 Mr. Jacobs. But we would agree that it does not appear that  
17 the facts are in dispute, that the weight of the evidence is  
18 strong in this matter.

19 THE COURT: But the video specifically -- I mean, I saw  
20 the pictures, the stills from outside the apartment.

21 Is there anything else that -- well, let me just ask  
22 here, Mr. Jacobs, is there anything you would like to cross the  
23 agent that we would need the video for?

24 MR. JACOBS: That I would need the video for, no.

25 I do think there are other factual issues, not

1 necessarily about the allegations themselves but about, for  
2 instance, what evidence the Government had at the time.

3 THE COURT: You are going to have a fulsome opportunity  
4 to cross the agent. I don't mean to suggest otherwise. I just  
5 want to get, again, to the technology part of it, do I need to  
6 have this video displayed in court?

7 MS. CHA: Your Honor, only if the Court wishes to see  
8 it but if the Court does not wish to see it we do not plan to  
9 put it on.

10 THE COURT: Okay. If there is anything that comes out  
11 at the hearing that I think would be guided by the video, I  
12 will ask for it, but at this point I will just ask, again,  
13 having read both your memoranda, it seems to me that I  
14 always -- the way my practice works is that I pursue the  
15 evidence and then I do argument.

16 So, having read what would be your proffer, it seems to  
17 me that we should just call the agent, unless there is anything  
18 additional that you need to add to that proffer?

19 MS. CHA: We have nothing additional to add, Your  
20 Honor.

21 THE COURT: Okay. Mr. Jacobs, do you wish to inquire?

22 MR. JACOBS: Yes, Your Honor, thank you.

23 THE COURT: Okay. I will have the agent come forward.

24 (The witness, Russell Jewell, was duly sworn.)

25 COURTROOM DEPUTY: Please be seated. Speak into the

1 microphone.

2 Can you state your name, spell your last name for the  
3 record and tell us where you're employed.

4 THE COURT: My name is Russell Jewell. That's spelled  
5 J-E-W-E-L-L. I am employed by the Federal Bureau of  
6 Investigations assigned to the Phoenix Field Office, working  
7 out of the Sierra Vista, Arizona RA.

8 DIRECT EXAMINATION

9 BY MR. JACOBS:

10 Q. Good morning, Special Agent Jewell.

11 A. Good morning.

12 Q. How long have you been with the FBI for?

13 A. Twelve years.

14 Q. I want to first talk about the various pieces of evidence  
15 in this case. Okay?

16 A. Okay.

17 Q. My understanding is that the alleged victim, MV, was  
18 interviewed on April 25th, 2022. Correct?

19 A. Correct.

20 Q. And that's the same day that this alleged incident took  
21 place?

22 A. Correct.

23 Q. It's my understanding there were two SANE exams conducted.  
24 Correct?

25 A. Correct.

1 Q. The first, again, was on April 25th?

2 A. Correct.

3 Q. And then a second was performed on May 10th. Is that  
4 right?

5 A. I don't recall the exact date, but it was sometime after  
6 the initial exam.

7 Q. Okay. Were there any reports produced from those SANE  
8 exams?

9 A. Yes.

10 Q. You have reviewed those?

11 A. Yes.

12 Q. Do you remember when they were dated?

13 A. I don't recall the dates off the top of my head, no. If  
14 you can provide them to me, I will be happy to provide those  
15 dates.

16 Q. I don't have them, I'm sorry.

17 A. Okay.

18 Q. The defendant was taken into custody on April 26th.

19 Correct?

20 A. That sounds correct.

21 Q. And he gave a statement. Is that right?

22 A. Right, correct.

23 Q. The same day?

24 A. Right, correct.

25 Q. There is some video evidence or video surveillance evidence

1 in this case. Correct?

2 A. Correct.

3 Q. And that was obtained on April 27th?

4 A. Correct.

5 Q. And then Mr. Mitchell's phone was seized when he was

6 arrested. Is that right?

7 A. That is correct.

8 Q. When was the analysis of his phone done?

9 A. I don't -- I didn't conduct the analysis myself. That was  
10 done by another officer. The exact date I can't give you that.  
11 I don't know.

12 Q. Was that done by state law enforcement or FBI?

13 A. So, it was a detective from Douglas Police Department who  
14 is also a task force officer for the FBI, so he works within  
15 our office but also as a detective with Douglas Police  
16 Department.

17 Q. And that photo was, again, seized when he was -- when  
18 Mr. Mitchell was taken into custody on the 26th?

19 A. When he was taken into custody. Correct?

20 Q. You mentioned that you have been an FBI agent for 12 years.  
21 Is that right?

22 A. Right, correct.

23 Q. Do you remember all the steps it took to apply to be a  
24 special agent?

25 A. It's been some time, but, yeah.

1 Q. Okay. You filled out an SF-86. Is that right?

2 A. That's correct, yes.

3 Q. Can you tell the Court what's an SF-86?

4 A. An SF-86 is basically one of the initial steps taken for  
5 somebody applying to federal -- for a security clearance,  
6 basically, and it has information of your background,  
7 information of where you lived, people you know, your  
8 employment history.

9 They are pretty comprehensive. It's for a background  
10 investigation, so that's what it's for.

11 Q. Let's talk about the background investigation. Based on  
12 your answers to the SF-86, an agency conducts a background  
13 investigation. Right?

14 A. That is correct.

15 Q. And so they talk to people from your past?

16 A. Generally, yes.

17 MS. CHA: Objection as to the relevance.

18 THE COURT: The relevance I understand, and Mr. Jacobs,  
19 just so you know, judges also do the exact same process so it's  
20 known to the Court.

21 MR. JACOBS: I will move on then. Thank you, Your  
22 Honor.

23 BY MR. JACOBS:

24 Q. You took a polygraph, though. Right?

25 A. Yes, for the FBI you do. I don't know how other agencies

1 do it. Some agencies require that. Some do not. I don't  
2 know, that's agency dependent.

3 Q. Okay. Polygraphs are also very probing?

4 A. The one I took was, yes.

5 Q. They talk about alcohol use. Correct?

6 A. It talks about mostly what's in the SF-86.

7 Q. Right.

8 A. Correct.

9 Q. So criminal history. Yeah?

10 A. Correct.

11 Q. Financial history?

12 A. You know, honestly, you are asking me questions that I  
13 don't know what his polygraph -- if he took one. They vary  
14 from agency to agency --

15 Q. Okay.

16 A. -- so, honestly, I am not comfortable speculating on what  
17 each individual goes through for polygraphs.

18 In general, yes, polygraphs are taken. I would be  
19 speculating onto what each polygraph and polygrapher asks each  
20 individual.

21 Q. But yours was probing?

22 A. I mean, it asks basic information off the SF-86.

23 Q. Okay. Mr. Mitchell voluntarily surrendered here in Miami  
24 on July 27th. Is that correct?

25 A. That's correct.

1 Q. So he drove from his parents' house to the Miami, I guess  
2 the FBI Miami Field Office in Miramar?

3 A. I don't know how he got there, but he -- from what I  
4 understand, he did show up to the FBI office, right.

5 Q. Did he surrender his passport?

6 A. I do not know. I wasn't there. I do not know.

7 MR. JACOBS: Okay. Those are all the questions I have,  
8 Your Honor.

9 THE COURT: Ms. Cha.

10 CROSS-EXAMINATION

11 BY MS. CHA:

12 Q. I have only one area to follow up on with you.

13 A. Yes.

14 Q. Special Agent Jewell, in this particular case did the  
15 victim immediately outcry to her friends and family?

16 A. That's correct, yes.

17 Q. Did she report it immediately to the police or was it her  
18 family members who encouraged her to report it to the police?

19 A. It was her family members who encouraged her.

20 Q. And do you understand that her family members asked her why  
21 she didn't directly report it to the police?

22 A. Yes.

23 Q. What do you understand she said?

24 A. From what I understand, she was concerned about this  
25 incident which took place which was conducted by a police

1 officer or someone who represented themselves and she was not  
2 comfortable -- she feared for going to the police to basically  
3 report another police officer.

4 Q. So, in essence, because she believes it was an officer who  
5 did this sexual assault, she feared reporting it directly to  
6 the police?

7 A. Yes.

8 MS. CHA: Thank you.

9 THE COURT: Any follow-up?

10 MR. JACOBS: No, Your Honor.

11 THE COURT: All right. Thank you, Agent Jewell.

12 THE WITNESS: Thank you.

13 THE COURT: Ms. Cha, do you have any additional  
14 evidence you would like to advance?

15 MS. CHA: We don't, Your Honor.

16 THE COURT: Mr. Jacobs, sticking with the evidentiary  
17 portion of the hearing first, do you have anything else that  
18 you wish to advance? I am aware of the exhibits you attached.

19 MR. JACOBS: I do, Your Honor. I was going to call  
20 Thomasena Mitchell, Mr. Mitchell's mother.

21 THE COURT: Okay. Ms. Mitchell, can you come forward?

22 MR. JACOBS: Just to orient the Court, Your Honor, the  
23 reason for this witness, Mr. Mitchell did not complete a  
24 Pretrial Services Report on advice of his state counsel in  
25 Arizona, so I think Mrs. Mitchell will be able to answer a lot

1 of the questions that would ordinarily be in the PRS report.

2 THE COURT: Okay. I appreciate that.

3 COURTROOM DEPUTY: Raise your right hand.

4 (The witness, Thomasena Mitchell, was duly sworn.)

5 COURTROOM DEPUTY: Thank you.

6 Please be seated. Speak into the microphone. State

7 your name and spell your first and last name for the record.

8 THE WITNESS: Thomasena Mitchell.

9 THE COURT: Would you spell your first name for me,  
10 please?

11 THE WITNESS: Sure, T-H-O-M-A-S-E-N-A.

12 THE COURT: And Mitchell is spelled the same as your  
13 son?

14 THE WITNESS: Yes, ma'am.

15 DIRECT EXAMINATION

16 BY MR. JACOBS:

17 Q. Good morning, Mrs. Mitchell.

18 A. Good morning.

19 Q. What do you do for a living?

20 A. I am a retired police sergeant.

21 Q. And so prior to retiring, where were you a police officer?

22 A. Miami-Dade Police Department.

23 Q. And how long did you do that for?

24 A. Thirty years.

25 Q. And are you married?

- 1 A. I am.
- 2 Q. To who?
- 3 A. Samuel Mitchell, Jr.
- 4 Q. Is that Mr. Mitchell's father?
- 5 A. Yes, it is.
- 6 Q. Okay. And what did he do for a living?
- 7 A. He was a Miami Beach police officer, retired also.
- 8 Q. How long did he do that for, if you know?
- 9 A. Twenty-eight years.
- 10 Q. Okay. Do you own a home?
- 11 A. Yes, we do.
- 12 Q. Where is that home?
- 13 A. In Miami Gardens.
- 14 Q. When did you buy it?
- 15 A. In the nineties. I am not sure the exact year.
- 16 Q. Okay. Is it paid off or is there still a mortgage?
- 17 A. There is a small mortgage on it.
- 18 Q. Where was Mr. Mitchell born?
- 19 A. In Miami.
- 20 Q. Where did Mr. Mitchell go to school?
- 21 A. He attended local Catholic schools.
- 22 Q. Local meaning Miami?
- 23 A. Yes, sir, Miami.
- 24 Q. Did Mr. Mitchell go to college?
- 25 A. He did.

1 Q. Where did he go?

2 A. He went to Miami-Dade College.

3 Q. Did he graduate?

4 A. Yes, he did.

5 Q. What was his degree in?

6 A. Criminal justice.

7 Q. When was that?

8 A. In 2016 or 2017, thereabouts.

9 Q. After he graduated did he get a job?

10 A. He did.

11 Q. Where did he work?

12 A. He was working at the Port of Miami working as an agent  
13 with the cruise lines, assisting their supervisor when he left  
14 and he also worked at Wild Wings interim before the port job.

15 Q. So after graduating college but before the port job he  
16 worked at Buffalo Wild Wings?

17 A. Yes, sir, and Ross, I'm sorry. He did security at Ross.  
18 He had small jobs prior to trying to get his job going.

19 Q. And how long did he work at the Port of Miami for?

20 A. I want to say Aaron was there for about nine months.

21 Q. Do you remember the year?

22 A. He stopped just before COVID, so that was what, 2020? So  
23 he was there in 2019.

24 Q. And then after his job at the terminal, what did he do?

25 A. He went out to Arizona and was working with CBP.

1 Q. When did he go out to Arizona?

2 A. In June of '20 -- what are we in, '22? 2021.

3 Q. Prior to him going to Arizona, had he ever lived outside of  
4 the state?

5 A. He did a summer at Tallahassee at FAMU but then he came  
6 home to help me with his ill grandmother and his sisters and he  
7 finished school at Miami-Dade. That was the extent of living  
8 away from home.

9 Q. If Mr. Mitchell were to get a bond in this case, would he  
10 be able to live with you and his father?

11 A. Absolutely, all our children are always welcome home.

12 Q. Prior to his surrender at the FBI, where was he living?

13 A. With us at home.

14 Q. As far as you know, Ms. Mitchell, has your son ever had any  
15 issues with drugs or alcohol?

16 A. No, sir.

17 Q. Has he ever been arrested for anything prior to this  
18 incident?

19 A. No, sir, model child.

20 Q. I think those are all the questions I have for you,  
21 Mrs. Mitchell. I appreciate it.

22 A. Thank you.

23 MS. CHA: No questions from the Government.

24 THE COURT: Thank you for coming forward, Ms. Mitchell.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Watch your step there.

2 Okay. Mr. Jacobs, anything else?

3 MR. JACOBS: No further questions, Your Honor.

4 THE COURT: All right. I know it's the Government's  
5 motion. I am going to tell you, though, Mr. Jacobs, two  
6 things. Your argument that relying on the weight of the  
7 evidence put me back on my heels, I am not going to lie, like  
8 really gave me pause because the case -- the motion for  
9 detention travels on the weight of the evidence, except I am  
10 not sure that I agree with that characterization anymore  
11 because I have been thinking about this almost continuously  
12 since your motion was -- your memo was filed.

13 And, again, I have had a lot of time to think about  
14 this before this started and I come to you with an open mind  
15 and with questions, but it seems to me that there is a fulsome  
16 presentation of all of the 3142 factors here, and I think it  
17 still very heavily weighs in favor of detention. And I'll tell  
18 you why so that you can respond in any way that you see fit.  
19 This is without prejudice to you making the argument you would  
20 have made without the benefit of my concerns.

21 It seems to me that, at a minimum, there is either no  
22 dispute or such objective evidence as to not be able to  
23 meaningfully dispute these facts.

24 Mr. Mitchell is a law enforcement officer. On that day  
25 in April he was a law enforcement officer who displayed on his

1 body the fact that he was a law enforcement officer.

2 He took a child from her school while wearing that  
3 displayed police signage on his body to his apartment.

4 Whatever happened after that is the subject for another  
5 proceeding at this point, I think, but when confronted with the  
6 accusations that he had had this child in his apartment, his  
7 story is meaningfully contradicted in at least two respects by  
8 the objective evidence, which as you know -- because I know  
9 that you give a very good closing argument -- evidences  
10 knowledge of guilt or the fear of a guilty conscience, that is,  
11 with respect to the backpack and whether or not he departed the  
12 car by himself or with the child.

13 Only liars need good memories prosecutors always say in  
14 closing argument, so these details are not small, as far as I'm  
15 concerned, the day after the child visited his apartment.

16 Okay. Traveling only on those facts and without even  
17 consideration of the horrific nature of the allegations, this  
18 is someone who abused a position of trust for the most  
19 vulnerable in our society and then lied about it. Everything  
20 about that indicates to me that this is someone who,  
21 notwithstanding his personal characteristics and the very  
22 loving attentive support of a family unit that is here and that  
23 is always meaningful to me, snapped or broke.

24 And his ability to abide by a condition of bond and not  
25 be a danger to the community -- I tend to agree with you that

1 risk of flight here can be overcome by conditions. It just  
2 could. This is a family unit that I think could keep him under  
3 house arrest, but his danger to this community, to "the  
4 community" I don't think can be addressed because of those  
5 personal characteristics. I don't think it's limited to the  
6 weight of the evidence but, legally, I'm also not sure that I  
7 agree with your argument because the presumption of innocence  
8 will carry with him from this proceeding. Notwithstanding, I  
9 have, obviously, as I must at every detention hearing, weighed  
10 the evidence and particularly that objective evidence that has  
11 been presented to me and has been meaningfully disputed.

12 So I have to do that at every detention hearing, and  
13 that does not prejudice his position going forward and the  
14 presumption of innocence that cloaks him at every stage of this  
15 proceeding until a jury decides otherwise, but you really made  
16 me think about that.

17 So those are my concerns. Just to narrow it, if I rely  
18 just on those facts that are neither dependent on  
19 uncorroborated allegations, if I rely just on those objective  
20 facts, it seems quite clear and convincing that this defendant  
21 presents a danger to the community that cannot be reasonably  
22 assured with conditions of bond.

23 MR. JACOBS: Can I respond, Your Honor?

24 THE COURT: Please.

25 MR. JACOBS: Thank you.

1           So, two things, I guess, to start with. From a legal  
2   framework perspective, there are circuits who have said that  
3   the weight of the evidence is one factor that the Court must  
4   consider, but it is the least important factor in terms of  
5   detention hearings, and that's the position the Ninth Circuit  
6   takes. If the Court wants a citation, I can provide that.

7           But even setting that aside, Your Honor, I think the  
8   same conditions that Your Honor has just said can guarantee  
9   that he is not a risk of flight, staying with his family, home  
10   detention, GPS monitoring, third party custodian, even, it  
11   wasn't in the memo, but a percentage bond, the family could put  
12   up some money for a percentage bond, all of those same factors  
13   are the same types of conditions that I think would guarantee  
14   the safety of the community.

15           Plus, and I don't mean to repeat what's in the memo  
16   because I know the judges hate when lawyers do that, but  
17   Mr. Mitchell's history for the last three months when he has  
18   been on bond have -- you know, he has a flawless record on  
19   bond.

20           THE COURT: I don't mean to interrupt you but you know  
21   that I often look to how has he complied in the past.

22           This is such an unusual defendant. This is such an  
23   unusual set of circumstances where nothing in his past would  
24   have indicated that this is coming, so it is -- I find myself  
25   in an odd situation of saying those three months, if the last

1 27 years, if the child that Ms. Mitchell just described is  
2 accurate, then there was no way to see this coming, so I don't  
3 see how I see the last three months as an indicator that he  
4 would comply with bond unless and until whatever triggered him  
5 on the 27th to pick that child up happened again.

6 MR. JACOBS: You see, Your Honor, this is where we  
7 disagree with how to weigh the weight of evidence and how the  
8 presumption of innocence comes to play in detention hearings.

9 I don't think that the Court should use the  
10 allegations. I am not disputing the seriousness or even the  
11 weight of the evidence the Government has. I am not disputing  
12 that, but to use those allegations to discount, again, like  
13 Your Honor said, 27 years of good behavior, both before this  
14 incident and after this incident, I just don't see how --

15 THE COURT: I understand. I have had the benefit of, I  
16 don't know, 48 concentrated hours of thinking about this and,  
17 ultimately, because I really did consider whether or not it  
18 would be legal error and to what extent a decision, if one was  
19 then made, because I didn't know what else you would present.  
20 I didn't know Ms. Mitchell was coming in, but if the decision  
21 was how the Government had argued it based primarily on the  
22 events that are described in the memorandum, would that be  
23 legal error.

24 Here is my issue with it. I don't know, but factually,  
25 in this case it is predominantly the characteristics of the

1 defendant that call me to question whether or not a bond could  
2 reasonably assure this community because of the fact that he  
3 abused a position of trust and lied about it afterwards, lied  
4 about details that evidence objectively showed he was lying  
5 about.

6           It is -- in my mind, I -- Mr. Jacobs, you know that I  
7 see dangerous and heinous crimes at detention hearings all the  
8 time, and I have to give it whatever weight I do at the time of  
9 the detention hearing. It is those two factors that give me  
10 more pause than anything else with respect to Mr. Mitchell and  
11 whether or not he will abide by a bond or whether he thinks he  
12 can get away with being in that special position of trust  
13 again.

14           MR. JACOBS: Your Honor, I'd like to focus, Your Honor,  
15 on the practicalities of the bond itself because I understand,  
16 you know, that in the abstract we have these allegations where,  
17 yes, he could snap -- as Your Honor is saying, maybe he could  
18 snap at any moment, but if you look at the actual conditions of  
19 the bond, Mr. Mitchell will be basically confined to his  
20 parents' house. He will have a GPS monitor on him.

21           He is no longer a border patrol officer. He no longer  
22 has this mantle of authority that he allegedly abused.

23           His mother, as Your Honor said, they have a strong  
24 family unit. Mr. Mitchell is not going to -- maybe -- again, I  
25 am speaking solely on the allegations. If the Government

1 thinks that he betrayed the United States' trust as a border  
2 patrol officer, etcetera, etcetera, this individual is not  
3 going to betray his family.

4 His mother -- they have put up \$20,000 in the state of  
5 Arizona. He received a bond there, and the, you know, the  
6 state prosecutor there had, I would say, 95 percent of the same  
7 evidence that is now present before the Court. And the state  
8 prosecutor there stipulated to a bond. The Court signed off on  
9 it. Then they modified it to allow him to leave the state and  
10 come to Florida.

11 I think these are very important pack factors, but  
12 going back to the practical considerations of this bond. He  
13 will be at home. He will be with his mother.

14 THE COURT: Hold on. What is the additional evidence  
15 that has become available?

16 MR. JACOBS: I assume that it's the phone, but it's  
17 unclear to me because based on the conversation with the  
18 special agent, it seems like they had everything within a few  
19 days of his arrest. So I'm not -- you know, the Government in  
20 their motion said that there is new evidence that the state  
21 court did not have. I assume it's the phone, but I don't know,  
22 Your Honor.

23 THE COURT: Okay. I will have Ms. Cha confirm, but it  
24 seems to me from the time line it will be the surveillance from  
25 the apartment complex.

1 MS. CHA: Your Honor, just to clarify. I don't know  
2 the timing of the phone and whether it had been dumped. I  
3 would be surprised if the phone had been dumped and produced to  
4 defendants prior to the bond hearing, but I don't know that for  
5 certain.

6 THE COURT: I think what you traveled on was a  
7 screenshot that agents saw at the time of his arrest.

8 MS. CHA: Correct.

9 THE COURT: So I didn't think it was at least what you  
10 proffered in the memoranda, the search history that was new.  
11 So it seemed just from a timing perspective to me that it could  
12 only be the apartment surveillance and the second SANE exam.

13 MS. CHA: Your Honor, yes, correct, Your Honor, the  
14 second SANE exam which showed evidence of anal trauma.

15 MR. JACOBS: But even the second SANE exam was May 10th  
16 and his bond was modified May 17th.

17 THE COURT: Modified, right, but it had already been  
18 stipulated to and entered immediately after he was picked up on  
19 the 26th. Right?

20 MR. JACOBS: Yes. So he was -- I think the time line  
21 is arrested on the 26th, arraigned on the 4th, and that's when  
22 the state bond was set. A SANE exam, a second SANE exam was on  
23 the 10th, and then on the 17th the bond was modified.

24 THE COURT: Okay.

25 MR. JACOBS: But, again, going back to the terms and

1 conditions of our proposed bond, Your Honor, third party  
2 custodian, both parents are willing to sign. Again, they are  
3 willing to put up even more money. I just don't see -- again,  
4 focusing on his history and characteristics, I don't see  
5 Mr. Mitchell fleeing or committing another crime that would, in  
6 all likelihood, result in severe sanctions for his family and,  
7 I mean, embarrassment to his mother, embarrassment to his  
8 family. I just don't see that.

9           There is no evidence -- first, there is no evidence  
10 proffered by the Government that he would snap again. His  
11 mental health is just not in -- there is nothing about it in  
12 evidence. As Your Honor knows SF-86, polygraph, background  
13 check, all of these things are looked into. So, again, all of  
14 the history and characteristics, other than the weight of the  
15 evidence and the allegation favor giving Mr. Mitchell a bond.

16           He has no history of drug abuse, of alcohol abuse, of  
17 any of the things that Your Honor typically sees.

18           Typically, when Your Honor sees a case, you know, a  
19 serious or especially heinous case, the defendant usually has  
20 other factors weighing towards detention. Usually it's  
21 criminal history.

22           Here we don't have any criminal history, at all. And  
23 it's not even -- his record is clean but it's especially clean  
24 because he was able to get a federal job as a border patrol  
25 agent, and we know that, again, from the SF-86, and I believe

1 on that website of border patrol, I believe a polygraph was  
2 required.

3 But he won't be in the community is the bottom line of  
4 my point. Under the conditions of the bond, he just won't be  
5 in the community. He is not currently employed, so we are not  
6 asking for any exceptions where he will travel within the  
7 community to go to and from a job. The only place he is going  
8 to travel to, Your Honor, is the District of Arizona for court  
9 dates. Otherwise, he is going to be at Mrs. Mitchell and  
10 Mr. Mitchell's home here in Florida with a location monitor.

11 THE COURT: All right. I am going to give Ms. Cha the  
12 last word.

13 Mr. Jacobs, did you have a chance to make your full  
14 argument?

15 MR. JACOBS: Yes, Your Honor.

16 MS. CHA: Thank you, Your Honor. Your Honor, we don't  
17 rely solely on the weight of the evidence as defense would have  
18 it. We rely on all the 3142(g) factors.

19 The first factor is the nature and circumstances of the  
20 defense. Here we charge him with kidnapping of a minor which  
21 is a presumption case. That strongly militates in favor of  
22 detention.

23 The second, of course, is the weight of the evidence  
24 which we all discussed, but the third and I'd like to spend  
25 some time on this one which Your Honor has pointed out, is the

1 history and characteristics of the defendant.

2 Mr. Jacobs believes that because he passes fulsome  
3 background check and passed a polygraph that this shows that he  
4 is not dangerous but, Your Honor, I think it shows the exact  
5 opposite. It is precisely what allowed him to become a federal  
6 law enforcement officer to receive specialized training and  
7 then to be able to abuse that to kidnap and sexually assault a  
8 child.

9 And, Your Honor, the fact that his badge has been taken  
10 away from him, the fact that he no longer carries a CBP  
11 insignia or the like, that doesn't preclude him from committing  
12 other offenses. You can go off on Amazon. You can go to your  
13 local costume store and you can still receive all the trappings  
14 of the law enforcement officer.

15 Your Honor, I want to talk about a case that the  
16 defense cited, and it's U.S. v Fiandor in his brief. It's a  
17 Southern District of Florida case which I understand was  
18 decided by Judge Moore.

19 You know, defense cited to this case for the  
20 proposition that because the defendant self-surrendered he  
21 wasn't a flight risk. The very next sentence in that case  
22 Judge Moore held that the defendant should be detained because  
23 he was a danger to the community. In that particular case, the  
24 defendant was charged for planning to impersonate officers and  
25 rob drug houses of drugs. And the Court held the fact that he

1 planned to impersonate a cop, in and of itself, was what made  
2 him so dangerous.

3 And I am reading from the opinion, more damaging than  
4 these facts -- it's referring to the defendant's criminal  
5 history -- is the nature of Fiandor's alleged criminal  
6 activity. Fiandor and his compadres allegedly impersonated law  
7 enforcement officers in order to rob residences of drugs and  
8 money.

9 Your Honor, if the defendant in Fiandor is dangerous  
10 because he has alleged to have impersonated law enforcement  
11 officers to be able to rob drug dealers of drugs, how much more  
12 so is the defendant who actually is a real federal law  
13 enforcement officer, although he has been fired, who used and  
14 abused his law enforcement privileges to kidnap and rape a  
15 child who was waiting for school.

16 Again, Your Honor, we would submit that even though he  
17 doesn't have his badge anymore, these are easy things that he  
18 could be able to get counterfeit.

19 The last thing I would want to point out on this  
20 dangerousness is that the District of Arizona and the Southern  
21 District of Florida are very similar in that they have a very  
22 multicultural population and many people who may fear law  
23 enforcement and fear immigration consequences if they come in  
24 contact with law enforcement.

25 And the defendant has shown in the instant case that he

1 preyed on a vulnerable child, a child he knew who lived in  
2 Mexico and crossed the border into the United States to, I  
3 would submit, Your Honor, because he believed that she would  
4 not report him for immigration consequences, and I would  
5 submit, Your Honor, that all the reasons why the District of  
6 Arizona was a place in which the defendant was able to commit  
7 his activity and his crimes, those circumstances also exist  
8 here in the Southern District of Florida.

9 The defense has argued for home confinement but, Your  
10 Honor, we do not believe that would reasonably assure the  
11 safety of the community.

12 He could leave his house. A monitor does not confine  
13 him into his house. As Your Honor has pointed out, he went  
14 27 years and this happened. He has done three months. There  
15 are still many more months. Who knows what could happen, and  
16 given the danger he poses to the community, I don't believe  
17 that that is a risk that could be mitigated with a home  
18 monitor.

19 THE COURT: Mr. Jacobs, do you want to respond?

20 MR. JACOBS: Yes, Your Honor.

21 So, one thing that bothers me, Your Honor, is if  
22 Mr. Mitchell, like so many of our clients and so many  
23 defendants who appear before you, if he had even one thing in  
24 his criminal history, we wouldn't even be having this  
25 discussion. But the fact that he has no criminal history and

1 the fact that he has spent three months under a bond that the  
2 state agreed to in Arizona, allowed him to travel across the  
3 country to Miami where he has done all the right things for  
4 three months, to not consider that or to heavily discount that,  
5 I think is -- it's just wrong under the Bail Reform Act.

6 I think it must be considered and I think it weighs  
7 heavily in favor of a bond.

8 He has been on a bond. He has shown that he has done  
9 well on a bond and, therefore, he should receive another bond.

10 I -- it just bothers me, Your Honor, that the  
11 Government talks about all of this potential for future  
12 criminal conduct while on bond, and, yet, he has demonstrated  
13 over the last 90 days that he hasn't come close to committing  
14 any future criminal conduct. He has abided by the terms of his  
15 bond and giving him a federal bond that is substantially  
16 similar to a state bond, all the evidence shows that he will  
17 continue to comply.

18 I think that's the only thing I needed to respond to,  
19 Your Honor. Thank you.

20 THE COURT: Okay. All right. I am going to recess for  
21 a minute. I have meant that I wanted to keep an open mind and  
22 come in here and I want to give this another thought before I  
23 make findings and determinations and we will be right back.

24 COURT SECURITY OFFICER: All rise.

25 (Brief recess.)

1           THE COURT: Thank you for everyone's patience. It is,  
2 obviously, an important decision, you can all be seated, and  
3 one that I don't take lightly.

4           There are -- Mr. Jacobs, I am going to enter an order  
5 of detention, and I will explain why, but more fulsome  
6 explanation will be in my written order because I would  
7 anticipate whichever way this was decided that one side or the  
8 other would want to appeal it, so I will have a fulsome written  
9 order.

10           The inquiry is two-fold. Does he present a danger to  
11 the community or a risk of flight? Yes and yes. So, the risk  
12 of flight by preponderance, the Government here has shown and  
13 danger to the community by clear and convincing objective  
14 evidence. That doesn't end my inquiry.

15           Are there conditions that would reasonably assure us?

16           As I have indicated, I am not holding him on risk of  
17 flight. I think the conditions here would be adequate to  
18 reasonably support his appearance in court.

19           I have very heavily considered Ms. Mitchell's testimony  
20 and her appearance here in court as well as everything that,  
21 again, I think I know about Mr. Mitchell because it's not  
22 meaningfully disputed by anybody, including the factors that I  
23 listed, his employment history and so forth. But with the  
24 color that Ms. Mitchell provided me about his education and  
25 background and the conditions that you have presented and

1 argued are as stringent as they can possibly be and ultimately  
2 the question comes down for me, do I think that even with a  
3 third-party custodian, that is, his parents and the house that  
4 he has been in, do I think that -- do I find that that is  
5 enough to reasonably assure the safety of the community, and  
6 here I find that it is not for several reasons.

7 It depends, in fact, on human compliance.

8 I understand your point and it is very well made that I  
9 have evidence that he has complied. I have a very small litmus  
10 test of where he has complied these last 90 days.

11 I don't know on a different record if it was longer if  
12 it would be more meaningful to me. I suspect, candidly, that  
13 it might not be because the -- there is a certain amount of  
14 unpredictability. There is an absence of indicators in his  
15 background that would suggest that this criminal activity was  
16 likely afoot or anything else, and that is another piece,  
17 frankly, that makes it very difficult for me to assess and give  
18 meaningful value to the opportunity for a third-party custodian  
19 to mitigate against the very significant risk that Mr. Mitchell  
20 presents to the community.

21 So, I would do a better way of explaining it in the  
22 written order, but I wanted you to understand the rationale,  
23 and if you think that I have misunderstood it -- although,  
24 honestly, I went back to the memoranda and reminded myself of  
25 two facts. I know we didn't go too far down any factual

1 proffer but the fact that when he came home and saw law  
2 enforcement he accelerated past his apartment complex and the  
3 fact that when he took the victim out of the car he draped her  
4 with a jacket to conceal the handcuffs, and my point being that  
5 I have, I hope, considered this record as fulsome as I can, and  
6 notwithstanding my finding that he presents a danger by clear  
7 and convincing evidence, I have considered all of the  
8 conditions and I make the determination here that a third-party  
9 custodian under this circumstance would not mitigate that risk.

10 So I will enter a written order and this is why I try  
11 to do all those other proceedings before the detention hearing  
12 because we have otherwise forgotten to now take up the removal  
13 hearing.

14 So, Mr. Mitchell, that's my ruling. I will enter a  
15 written order. I want to, again, acknowledge Ms. Mitchell for  
16 being here under very difficult circumstances. I credit your  
17 testimony. I appreciate the support you have shown your son  
18 and hope that you will continue to do so because he is going to  
19 need it. So I don't want you to think I minimize or discredit  
20 what you said to me here today. I don't.

21 Okay. But with that, I think that is all we have left  
22 to do in this case, Ms. Cha, unless there is anything else.

23 MS. CHA: Nothing else from the Government.

24 THE COURT: Okay. I will enter the order of  
25 commitment.

1           Mr. Jacobs, is there anything else?

2           MR. JACOBS: No, Your Honor, thank you.

3           THE COURT: I had an unusually excellent detention  
4 hearing. Notwithstanding the result, I understand that you and  
5 Mr. Mitchell may be disappointed in the ruling, but I am really  
6 very grateful, frankly, for both the evidentiary and legal  
7 presentation that you have made.

8           MR. JACOBS: Thank you, Your Honor.

9           (Proceedings were concluded.)

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## C E R T I F I C A T E

I, Patricia Diaz, Registered Professional Reporter,  
in and for the United States District Court for the Southern  
District of Florida, do hereby certify that I transcribed from  
digital audio recording the proceedings had the 1st day of  
August, 2022, in the above-mentioned court; and that the  
foregoing transcript is a correct and complete transcript of  
said digital audio recording.

August 22, 2022  
DATE

/s/Patricia Diaz  
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